

Amendment No. 2 to SB3591

Johnson  
Signature of Sponsor

**AMEND Senate Bill No. 3591**

**House Bill No. 3163\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Chapter 1 of the Public Acts of 2010 (Ex. Sess.) (Senate Bill 1 / House Bill 7 of the First Extraordinary Session) is amended by deleting SECTION 2 of the chapter in its entirety and substituting instead the following:

SECTION 2. Tennessee Code Annotated, Section 50-6-113, is amended by deleting subsections (f) and (g) in their entirety.

SECTION 2. Chapter 1 of the Public Acts of 2010 (Ex. Sess.) (Senate Bill 1 / House Bill 7 of the First Extraordinary Session) is amended by deleting the language "March 28, 2011" wherever it occurs in SECTION 3 of the chapter and substituting instead the language "March 1, 2011".

SECTION 3. Tennessee Code Annotated, Section 50-6-102(10), is amended by adding a new appropriately designated subdivision:

( ) "Employee" does not include a construction services provider, as defined in § 50-6-901, who is listed on the construction services provider workers' compensation exemption registry established pursuant to part 9 of this chapter if the construction services provider is not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services and the construction services provider is rendering services on a:

(i) Construction project that is not a commercial construction project, as defined in § 50-6-901; or

(ii) Construction project that is a commercial construction project, as defined in § 50-6-901, and the general contractor for whom the construction services provider renders construction services complies with § 50-6-914(b)(2);

SECTION 4. Tennessee Code Annotated, Section 50-6-104, is amended by adding the following new subsection:

(d) This section shall not apply to officers of a corporation engaged in the construction industry, as defined by § 50-6-90; instead, part 9 shall apply to officers in a corporation engaged in the construction industry.

SECTION 5. Tennessee Code Annotated, Section 50-6-113, is amended by adding a new appropriately designated subsection thereto:

( ) This section shall not apply to any person engaged in the construction industry, as defined by § 50-6-901.

SECTION 6. Tennessee Code Annotated, Section 50-6-117, is amended by adding the following language to the end of the section:

This section shall not apply to a corporate officer engaged in the construction industry, as defined by § 50-6-901.

SECTION 7. Tennessee Code Annotated, Section 50-6-405(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d)

(1) It is an offense for any employer whose employee is entitled to the benefits of this chapter:

(A) To require such employee to pay any portion of the insurance premium paid by the employer; or

(B) To deduct any portion of such premium from the wages or salary of such employee.

(2) A violation of subdivision (d)(1) is a Class C misdemeanor.

(3)

(A) In addition to any criminal penalty assessed for a violation of (d)(1), the commissioner is authorized to impose a civil penalty of up to any amount equal to the amount of premiums deducted from such employee's wages or salary.

(B) If civil penalties are assessed pursuant to subdivision (d)(3)(A), the commissioner shall assess the penalty in a specific dollar amount to be paid directly to the employee.

SECTION 8. Tennessee Code Annotated, Section 50-6-412(d)(2), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 9. Tennessee Code Annotated, Section 50-6-412(e)(1), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 10. Tennessee Code Annotated, Section 50-6-412(f), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2)

times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 11. Tennessee Code Annotated, Section 50-6-412(f)(4), is amended by deleting the language "two and one half (2 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "two and one half (2 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of two thousand dollars (\$2,000) or two and one half (2 1/2) times the average yearly workers' compensation premium".

SECTION 12. Tennessee Code Annotated, Section 50-6-412, is amended by adding the following new subsections (g) and (h) and redesignating existing subsections accordingly:

(g) The commissioner shall order that any employer engaged in the construction industry that fails to secure payment of compensation as required by this chapter be removed from the construction services provider workers' compensation exemption registry established pursuant to part 9 of this chapter until such time as the employer has secured payment of such compensation.

(h)

(1) In the event an employer engaged in the construction industry fails to comply with the requirements of this chapter, by failing to secure payment of compensation on a second or subsequent occasion within five (5) years from the instant failure, the commissioner shall issue a monetary penalty to the employer that is the greater of three thousand dollars (\$3,000) or three (3) times the average yearly workers' compensation premium.

(2) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter by failing to secure payment for compensation on a second or subsequent occasion

within five (5) years from the instant failure, the person shall be permanently prohibited from obtaining an exemption pursuant to part 9 of this chapter and the commissioner shall notify the secretary of state of such prohibition.

SECTION 13. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding a new part thereto:

**§ 50-6-901.**

For purposes of this part, unless the context otherwise requires:

(1) "Board" means the state board for licensing contractors;

(2) "Commercial construction project" means any construction, remodeling, repair or improvement that is not construction, remodeling, repair or improvement of one (1), two (2), three (3) or four (4) family unit residences not exceeding three (3) stories in height or accessory use structures in connection with the residences, but shall not include, any construction, remodeling, repair or improvement by any person, municipality, county, metropolitan government, cooperative, board, commission, district, or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste water services, telephone service or any combination thereof, for sale to consumers in any particular service area;

(3) "Construction project" means any construction undertaking for which a building permit has been issued, or is required to be issued, by a municipality or county for the entire construction undertaking or any portion thereof;

(4) "Construction services provider" or "provider" means any person engaged in the construction industry;

(5) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation of a corporation that in the case of a domestic corporation is formed under the laws of this state pursuant to title 48, chapters 11- 68 or in the case of a foreign corporation is authorized to transact business in this state pursuant to title 48, chapters 11 – 68. For purposes of this subdivision, "person" means only a natural person and does not include a business entity;

(6) "Direct labor" means the performance of any activity that would be assigned to the Contracting Group as those classifications are designated by the rate service organization designated by the commissioner of commerce and insurance as provided in § 56-5-320, but does not include:

(A) Classification code 5604, or any subsequent classification code, for construction executives, supervisors, or foremen that are responsible only for the oversight of laborers; or

(B) Classification code 5606, or any subsequent classification code, for project managers, construction executives, construction managers and construction superintendents having only administration or managerial responsibilities for construction projects by exercising operational control indirectly through job supervisors or foremen;

(7) "Engaged in the construction industry" means any person or entity assigned to the Contracting Group as those classifications are designated by the rate service organization designated by the commissioner of commerce and insurance as provided in § 56-5-320;

(8) "Family owned business" means a business entity in which members of the same family have an aggregate of at least ninety-five percent (95%) ownership of such business;

(9) "Member of a limited liability company" means any member of a limited liability company formed pursuant to title 48, chapters 201 – 249. For purposes of this subdivision, "member" means only a natural person and does not include a business entity;

(10) "Members of the same family" means parents, children, siblings, grandparents, grandchildren, or spouses of such;

(11) "Partner" means any person who is a member of an association that is formed by two (2) or more persons to carry on as co-owners of a business or other undertaking for profit formed under Tennessee law. For purposes of this subdivision, "person" means only a natural person and does not include a business entity;

(12) "Registry" means the construction services provider workers' compensation exemption registry established pursuant to this part and maintained by the secretary of state; and

(13) "Sole proprietor" means one (1) person who owns a form of business in which that person owns all the assets of such business. For purposes of this subdivision, "person" means only a natural person and does not include a business entity.

**§ 50-6-902.**

(a) Except as provided in subsection (b), all construction services providers shall be required to carry workers' compensation insurance on themselves.

(b) To the extent there is no restriction on applying for an exemption pursuant to § 50-6-903, a construction services provider shall be exempt from subsection (a) if the provider:

(1) Is a construction services provider rendering services on a construction project that is not a commercial construction project and is listed on the registry;

(2) Is a construction services provider rendering services on a commercial construction project, is listed on the registry and such provider is rendering services to a person or entity that complies with § 50-6-914(b)(2);

(3) Is covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services;

(4) Is a sole proprietor or partner engaged in the construction industry doing work directly for the owner of the property;

(5) Is a sole proprietor or partner building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the sole proprietor or partner's own property for the sole proprietor or partner's own use and for which the sole proprietor or partner receives no compensation; or

(6) Is a provider whose employment at the time of injury is casual as provided in § 50-6-106.

(c) A subcontractor engaged in the construction industry under contract to a general contractor engaged in the construction industry may elect to be covered under any policy of workers' compensation insurance insuring the general contractor upon written agreement of the general contractor, regardless



of whether such subcontractor is on the registry established pursuant to this part, by filing written notice of the election, on a form prescribed by the commissioner of labor and workforce development, with the department. It is the responsibility of the general contractor to file the written notice with the department. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the department and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the department.

(d) Nothing in this section shall be construed as exempting or preventing any business entity engaged in the construction industry from providing workers' compensation coverage for any of its employees.

**§ 50-6-903.**

(a) Except as provided in subsections (b) and (c), any construction services provider who meets one of the following criteria may apply for an exemption from § 50-6-902(a):

(1) An officer of a corporation who is engaged in the construction industry; provided that no more than five (5) officers of one (1) corporation shall be eligible for an exemption;

(2) A member of a limited liability company who is engaged in the construction industry if such member owns at least thirty percent (30%) of such company;

(3) A partner in a limited partnership, limited liability partnership or a general partnership who is engaged in the construction industry if such partner owns at least thirty percent (30%) of such partnership;

(4) A sole proprietor engaged in the construction industry; or

(5) An owner of any business entity listed in subdivisions (1) - (4) that is family owned; provided, no more than five (5) owners of one (1) family owned business may be exempt from § 50-6-902(a).

(b)

(1) Notwithstanding subsection (a), if a construction services provider is exempt from § 50-6-902 as an officer of a corporation, a member of a limited liability company, or a partner in a limited partnership, limited liability partnership or a general partnership, then no construction services provider of an affiliate of such an exempted provider shall be eligible to apply for nor receive an exemption from § 50-6-902(a).

(2) As used in this subsection (b), affiliate with respect to the corporation, limited liability company, limited partnership, limited liability partnership or general partnership means:

(A) A person that directly or indirectly controls, is controlled by or is under common control with the entity;

(B) An officer of, or an individual performing similar functions with respect to, the entity;

(C) A director or partner of, or an individual performing similar functions with respect to, the entity.

(c) A construction services provider shall only be eligible for one (1) exemption, regardless of the number of business entities with which the provider may be associated.

**§ 50-6-904.**

(a)

(1)

(A) Any construction services provider applying for an exemption from § 50-6-902(a) who has not been issued a license by the board shall obtain a construction services provider registration from the secretary of state at the same time such provider applies for such exemption.

(B) The secretary of state is authorized and directed to issue the construction services provider registration on behalf of the board. The secretary of state shall issue an identification number assigned to the provider's registration. The board shall obtain such identification number and other identifying information from the secretary of state and post such information as provided in § 50-6-911(b)(2).

(2) Any construction services provider requesting exemption from § 50-6-902(a) shall submit an application to the secretary of state. The applicant shall provide sufficient documentation for the secretary of state to assure that such person meets the requirements set out in § 50-6-902, including, but not limited to:

(A) The applicant's full legal name;

(B) The applicant's birth month;

(C) The applicant's physical mailing address;

(D) A telephone number in which the applicant can be reached;

(E) The name of the business entity for which the construction services provider is seeking the workers' compensation exemption;

(F) The federal employer identification number issued to the business entity listed in subdivision (a)(2)(E);

(G) The license or registration number issued by the board or the secretary of state, respectively; and

(H) Any other information the secretary of state deems necessary to identify such person.

(3) The secretary of state shall verify that the applicant meets the qualifications set out in § 50-6-902 upon a review of its records and the records provided by such applicant.

(b) The application shall be on a form designed by the secretary of state and shall contain a statement that specifies the eligibility requirements for exemption, contain an attestation that the applicant meets the eligibility requirements and contain a statement that a false statement on such application is subject to the penalties of perjury set out in § 39-16-702.

(c) The application, as well as a process for submission of such application, shall be available through the secretary of state's web site or by contacting the secretary of state's office in person or by mail.

**§ 50-6-905.**

(a) If the construction services provider's application delivered to the secretary of state meets the requirements of this part, as determined by the secretary of state, the secretary of state shall file it and:

(1) Issue a notice that such provider is listed on the registry; and

(2) Publish on the registry, contained on the secretary of state's web site, the provider's name and other identifying information, including but not limited to:

- (A) The full legal name of the provider;
- (B) The specific identification number issued to the provider by the secretary of state upon filing the application;
- (C) The period in which the provider is exempt, including the date and time in which such exemption expires; and
- (D) Any other identifying information the secretary of state deems necessary for the public to identify such provider.

(b) The provider shall not be exempt from the requirement of § 50-6-902(a) until the provider's application is filed by the secretary of state and the applicant's name and other identifying information is published on the registry.

(c) A provider listed on the registry may correct a document filed with the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged. A document shall be corrected in a manner established by the secretary of state.

(d) A provider listed on the registry shall maintain a current physical mailing address with the secretary of state. A change of address shall be made in a manner established by the secretary of state.

**§ 50-6-906.**

(a) If the secretary of state refuses to file an application and list the construction services provider on the registry, the secretary of state shall return such application to the provider within a reasonable time after the document was

received for filing, together with a brief, written explanation of the reason for the secretary of state's refusal to file.

(b) If the secretary of state refuses to file an application and list a provider on the registry, the provider may appeal the refusal to the chancery court of Davidson County. The appeal shall be commenced by petitioning the court to compel listing such provider on the registry and shall attach to the petition the application and the secretary of state's explanation of the secretary of state's refusal to file.

(c) The court may reverse or modify the actions of the secretary of state if the rights of the provider have been prejudiced because the secretary of state's actions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the secretary of state;
- (3) Made upon unlawful procedure; or
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(d) After any hearing deemed necessary by the court, the court may summarily order the secretary of state to list such provider on the registry or take other action the court considers appropriate.

(e) The court's final decision may be appealed as in other civil proceedings.

**§ 50-6-907.**

(a) The exemption obtained pursuant to this part shall be valid for two (2) years from a date and time set by the secretary of state. No more than sixty (60) days prior to the expiration of the exemption period, a construction services

provider may file an application to renew an exemption. Renewal of an exemption shall be made in a manner established by the secretary of state.

(b) The secretary of state shall remove the construction services provider's name from the registry at the close of business on the day the provider's exemption expires. If the exemption day falls on a non-business day, the exemption shall expire on the close of business of the next business day.

(c) A construction services provider whose registration expires under this section may renew the exemption by following the procedure outlined in § 50-6-904.

**§ 50-6-908.**

(a)

(1) Any construction services provider who obtains an exemption and subsequently chooses to revoke such exemption shall:

(A) Give notice of the revocation in accordance with a form prescribed by the secretary of state; and

(B) Notify the construction services provider that such provider is required to notify, within twenty-four (24) hours of such revocation, any person or entity for whom the provider is currently providing services.

(2) Upon filing such notice, the secretary of state shall remove the construction services provider's name from the registry.

(3) A construction services provider who revokes an exemption under this section may reapply for an exemption by following the procedure set forth in § 50-6-904.

(b)

(1) In addition to the revocation set out in subsection (a), a workers' compensation exemption may be revoked by the secretary of state upon:

(A) Notification from the board that the board has revoked or suspended any license issued to the construction services provider by the board;

(B) Notification from the department of any violations of § 50-6-412 by the construction services provider;

(C) A determination by the secretary of state that the construction services provider no longer meets the requirements for an exemption established pursuant to this part; or

(D) A determination by the secretary of state that the construction services provider failed to renew prior to the expiration date of such exemption or the provider failed to pay any fees required to be paid pursuant to this part.

(2) Any notification of a violation made by the department pursuant to subdivision (b)(1)(B) shall include information indicating whether such violation requires a temporary or permanent revocation pursuant to § 50-6-412.

(3) If a provider's exemption is revoked pursuant to this section, the secretary of state shall:

(A) Remove the construction services provider's name from the registry within seven (7) days of receipt of notification from the department or the board, or upon making a determination as provided in subdivision (b)(1)(C) or (D); and



(B) Notify the construction services provider that such provider is required to notify, within twenty-four (24) hours of such revocation, any person or entity for whom the provider is currently providing services.

(4) If a provider's exemption is revoked pursuant to subdivision (b)(1), the administrative and judicial procedures available to such provider shall be those procedures set out in § 50-6-906.

(c) If a construction services provider's exemption is revoked pursuant to this section, the construction services provider shall be required to carry workers' compensation insurance as provided in § 55-6-902(a); provided that such construction services provider does not otherwise meet an exemption set out in § 55-6-902(b).

(d) A construction services provider whose exemption is revoked for any reason set out in this part shall be notified of such revocation in writing, and shall not be entitled to a refund of filing fees.

**§ 50-6-909.**

(a) Except as provided in § 50-6-412(h)(2), a construction services provider whose exemption is revoked pursuant to § 50-6-908 may apply to reinstate such exemption in the same manner as provided for in this part for an initial application.

(b) A construction services provider whose exemption is revoked under § 50-6-908(b) may only be granted a reinstatement of exemption:

(1) Upon notification from the board that such provider's license is no longer revoked or suspended;

(2) Upon notification from the department of labor and workforce development that the provider qualified for reinstatement pursuant to § 50-6-412(g); and

(3) If the secretary of state determines that the provider meets the requirements for an exemption established pursuant to this part.

(c) Upon verification by the secretary of state that the requirements of subsection (b) are met, the secretary of state shall file the application in accordance with § 50-6-905.

**§ 50-6-910.**

Any action to recover damages for injury, as defined by § 50-6-102, by a construction services provider on the registry, who is not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services, and is a provider who is eligible for an exemption pursuant to § 50-6-914(b)(2), shall proceed as at common law, and the defendant in the suit may make use of all common law defenses; provided, however, such construction services provider shall forego the right to sue to establish or reestablish workers' compensation coverage while the construction services provider is listed on the registry.

**§ 50-6-911.**

(a)

(1) The secretary of state shall provide notice on its web site that the registry is for purposes of establishing providers who are exempt from workers' compensation coverage and in no way reflects licensing or certification of any construction services provider.

(2) The board, the department of commerce and insurance and the department of labor and workforce development shall each develop a

notice provision to inform the public that any person interested in determining whether a construction services provider is exempt from workers' compensation coverage shall review the secretary of state's web site. Such notice provision shall be prominently displayed on the web site of the board, the department of commerce and insurance and the department of labor and workforce development.

(b)

(1) The secretary of state shall provide notice to the department of labor and workforce development, the board and the department of commerce and insurance when a person is added to or removed from the registry.

(2)

(A) The board shall be responsible for maintaining a list of:

(i) Individuals who have been issued a construction services provider registration; and

(ii) Individuals who have been issued a construction services provider workers' compensation exemption.

(B) If any construction services provider listed on the registration list set out in subdivision (b)(2)(A)(ii) has a license issued by the board, and such license is revoked or suspended, the board shall immediately notify the secretary of state to take action to revoke such provider's exemption pursuant to § 50-6-908(b).

**§ 50-6-912.**

(a) The secretary of state may charge the following maximum fees for each of the following:

- (1) The issuance of a construction services provider registration.....\$100
- (2) The issuance of a construction services provider workers' compensation exemption.....\$100
- (3) The filing of correction information pursuant to § 50-6-905(c).....\$20
- (4) The filing of change of address information pursuant to § 50-6-905(d).....\$20
- (5) The filing of a construction services provider workers' compensation exemption renewal.....\$100
- (6) The filing of a construction services provider registration renewal.....\$100
- (7) The filling of a revocation pursuant to § 50-6-908(a).....\$20
- (8) The issuance of a copy of the notice issued pursuant to § 50-6-905(a)(1)..\$20

(b) In addition to the maximum fees authorized in subdivision (a), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.

(c) Except as provided in subsections (a) and (b), no other fees shall be charged by the secretary of state to administer this part.

**§ 50-6-913.**

(a) Any fee collected pursuant to § 50-6-912 shall be deposited in the fund established pursuant to subsection (b) and shall not be subject to § 8-21-205 or § 50-6-801.

(b)

(1) There is created a fund to be known as the workers' compensation employee misclassification education and enforcement fund, referred to in this part as "the fund". Except as provided in subsection (c), all money in such fund shall be allocated to the secretary

of state to pay for all costs associated with the administration of this part. Monies in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in subsection (c).

(2) Interest accruing on investments and deposits of the fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(3) Monies in the fund account shall be invested in accordance with § 9-4-603.

(c)

(1) Beginning in fiscal year 2013-2014, any surplus in the fund shall be allocated to the:

(A) Department of labor and workforce development for purposes of investigating and enforcing noncompliance with workers' compensation insurance requirements, and for purposes of educating construction services providers and employers of the requirements of this part; and

(B) Secretary of state for purposes of making improvements needed to maintain the construction services provider workers' compensation exemption registry.

(2) For purposes of this subsection (c), "surplus" means any amount in the fund that exceeds one and one-half (1.5) times the amount used from the fund in the previous fiscal year to pay for the costs associated with this part.

(3) Beginning on October 1, 2012, and annually thereafter, the treasurer shall report the amount of any surplus in the fund to the

commissioner of finance and administration for inclusion in the annual budget document prepared pursuant to title 9, chapter 4, part 51.

(4)

(A) The secretary of state shall report to the treasurer, the speaker of the house of representatives, the speaker of the senate and the commissioner of finance and administration the total amount of expenditures for purposes of implementing this part for the prior fiscal year, as provided in subsection (b)(1), and any expenditures that may be made pursuant to subdivision (c)(1)(B).

(B) The commissioner shall report to the treasurer, the speaker of the house of representatives, the speaker of the senate and the commissioner of finance and administration any expenditures that may be made pursuant to subdivision (c)(1)(A).

(C) Reports made pursuant to subdivisions (c)(4)(A) and (B) shall be made no later than September 1, 2011, and no later than September 1 of each year thereafter.

(5) The governor shall submit to the general assembly in the annual budget document prepared pursuant to title 9, chapter 4, part 51 recommendations concerning the distributions to be made pursuant to subdivision (b)(1) and this subsection (c). The general assembly shall appropriate such surplus in accordance with the purposes provided in subdivision (b)(1) and this subsection (c).

**§ 50-6-914.**

(a) Except as provided in subsection (b), a general contractor, intermediate contractor or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the general

contractor, intermediate contractor or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

(b)

(1) Notwithstanding subsection (a) and subject to subdivision (b)(2), a general contractor or subcontractor shall not be liable for workers' compensation to a construction services provider listed on the registry established pursuant to this part.

(2)

(A) No more than three (3) construction services providers who are performing direct labor on a commercial construction project may be exempt from § 50-6-902(a).

(B) For purposes of subdivision (b)(2)(A), three (3) construction services providers shall be the first three (3) construction services providers who sign a contract to provide services on a commercial construction project.

(C) It shall be the responsibility of the general contractor to provide notice to any construction services provider who provides services to such general contractor and who is listed on the registry that such provider is not eligible for an exemption pursuant to this part while working on the general contractor's commercial construction project.

(c) Any general contractor or subcontractor who pays compensation under subsection (a) may recover the amount paid from any person who, independently of this section, would have been liable to pay compensation to the injured employee, or from any subcontractor.

(d) Every claim for compensation under this section shall be presented first to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the general contractor or subcontractor; provided, that the collection of full compensation from one (1) employer shall bar recovery by the employee against any others, and the employee shall not collect from all employers a total compensation in excess of the amount for which any of the contractors is liable.

(e) This section applies only in cases where the injury occurred on, in, or about the premises on which the general contractor has undertaken to execute work or that are otherwise under the general contractor's control or management.

**§ 50-6-915.**

Notwithstanding any law to the contrary, records maintained by the secretary of state relative to the workers' compensation exemption registration, other than records displayed on the registry established pursuant to this part, shall not be open for public disclosure.

**§ 50-6-916.**

Nothing in this part shall be construed as preventing or prohibiting any contractor from requiring a certificate of workers' compensation insurance from any of its subcontractors.

**§ 50-6-917.**

A policy of workers' compensation insurance issued through the assigned risk plan as provided in § 56-5-314 that insures a person engaged in the construction industry shall be governed by this part, and a state agency shall not impose requirements relative to this part on such a policy other than those imposed by this part.



## SECTION 14.

(a) There is created a taskforce to study issues relative to employee misclassification and workers' compensation, including but not limited to:

(1) The impact on state and local governments of this state, including but not limited to the impact on departments, divisions, and agencies of such;

(2) The amount of state revenue, if any, that is lost or not collected due to the misclassification of employees for purposes of workers' compensation;

(3) The lost earnings of the insurance industry due to employee misclassification as it pertains to workers' compensation;

(4) Estimates of the extent of the problem of employee misclassification and whether particular industries are more likely to engage in the misclassification of employees to avoid certain provisions of this chapter;

(5) Consideration of whether state law should specify a uniform definition of the employment relationship and, if so, how it should be defined;

(6) Information concerning the operation of the department of labor and workforce development in investigating complaints of employee misclassification and enforcing this chapter, including but not limited to:

(A) The number of complaints submitted to the department pursuant to this chapter;

(B) The number of complaints investigated by the department; and

(C) The outcome of the complaints that were investigated, including whether any employers were found to have misclassified employees and the amount of fines imposed against such employers; and

(7) Any other issues the task force determines appropriate.

(b) The task force shall seek public input and may conduct public hearings or appoint study groups as necessary to obtain information necessary to complete the study.

(c) Membership on the taskforce shall be as follows:

- (1) The commissioner of labor and workforce development or the commissioner's designee;
- (2) The commissioner of commerce and insurance or the commissioner's designee;
- (3) The secretary of state or the secretary of state's designee;
- (4) The attorney general and reporter or the attorney general's designee;
- (5) Two (2) members of the house of representatives selected by the speaker of the house of representatives; and
- (6) Two (2) members of the senate selected by the speaker of the senate.

(d) Members of the taskforce shall be appointed no later than July 1, 2010. The first meeting of the taskforce shall be no later than August 1, 2010. The commissioner of the department of labor and workforce development shall serve as the temporary chair of the taskforce and shall call the first meeting. At the first meeting, the taskforce shall elect a permanent chair from among its membership.

(e) On or before February 1, 2012, the taskforce shall submit a report on the study conducted pursuant to subsection (a) to the commerce, labor and agriculture committee of the senate, and the consumer and employee affairs committee of the house of representatives, at which time the taskforce shall cease to exist.

SECTION 15. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the General Appropriations Act.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. The secretary of state is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 18.

(a) For purposes of the secretary of state developing and implementing an application process and registry, and for purposes of making appointments to the taskforce established pursuant to this act, this act shall take effect upon becoming a law, the public welfare requiring it.

(b) Sections 7, 8, 9, 10 and 11 and subdivision (h)(1) in Section 12 of this act shall take effect July 1, 2011, the public welfare requiring it.

(c) For all other purposes, this act shall take effect March 1, 2011, the public welfare requiring it, provided, that:

(1) Construction services providers not currently licensed by the board for licensing contractors, but who qualify for a construction services provider registration shall be allowed to apply for a workers' compensation exemption on or after January 1, 2011;

(2) Construction services providers licensed by the board for licensing contractors shall be allowed to apply for a workers' compensation exemption on or after February 1, 2011; and

(3) The construction services provider workers' compensation exemption for any provider not exempt under current law and who has submitted an application that has been filed with the secretary of state shall be in effect

beginning at 12:00 a.m. on March 1, 2011, regardless of such provider's date of application; provided that, any person exempt under provisions of law in effect prior to March 1, 2011, shall maintain such exemption until March 1, 2011.